during the period in which he is deprived of beneficial ownership. The same reasoning suggests itself when the property owner sues for damages for injury to his property caused by the exercise of the right of eminent domain. But in the recent case of *Geohegan* v. *Union Elevated Ry.* (Ill. 1915) 107 N. E. 786, where the plaintiff sued to recover damages for injury to his property caused by the construction, operation, and maintenance of an elevated railroad on abutting property, the court refused to allow any interest. As the damages were still unliquidated, and there had been no unreasonable or vexatious delay in payment, the plaintiff could not claim interest under the statute, and no recovery could be had except thereunder.[17] This is the necessary and logical result in such a case in a jurisdiction where the English view is so firmly rooted that the court is bound by *stare decisis*, and a change can be brought about only by the legislature. At the same time, if the reasoning of the majority of the courts in this country in eminent domain proceedings be sound, the plaintiff is being deprived of a necessary part of his compensation. As already observed, the mere technical difficulty that the amount of injury is unliquidated at the moment it is caused, has been removed to a great extent in tort actions;[18] and in a jurisdiction where the recovery of interest is not entirely dependent upon statute, it is submitted that fuller compensation would be accorded the plaintiff in such an action by granting him interest from the date of the injury, at least as damages within the discretion of the jury.[19]

---

REASONABLENESS OF A PARTICULAR RAILROAD RATE.—Two principles are fundamental in the law of rate making: first, that rates determined by the legislative authority are presumed to be reasonable and just unless the contrary be made to appear clearly; and secondly, that individuals and corporations engaging in a public service business are entitled to a reasonable compensation for the use of their property devoted to such service.[1] The Due Process Clause imposes a limitation upon rate regulation and requires that the public utility shall

---

[17]The Illinois statute on interest provides for its allowance on money lent or advanced for the use of another; on money due on settlement of account from the day of liquidating accounts between the parties and ascertaining the balance; and on money withheld by an unreasonable and vexatious delay of payment. See Chicago *v.* Tebbetts (1881) 104 U. S. 120.

[18]1 Sedgwick, Damages (9th ed.) § 316; D. L. & W. R. R. *v.* Burson (1869) 61 Pa. 369; Fell *v.* Union Pac. Ry. (1907) 32 Utah 101; Gulf, Colorado etc. Ry. *v.* Graves (1907) 45 Tex. Civ. App. 375. In the last case, the plaintiff appears to have been entitled to interest as a matter of law, even though the damages were unliquidated before the verdict.

[19]It must be admitted that to give interest in such a case would be to carry the prevailing view to an extreme, but there is some justification and authority for doing so. McConnell *v.* Slappey (1909) 134 Ga. 95; Freemont etc. R. R. *v.* Marley (1888) 25 Neb. 138; Gulf, Colorado etc. Ry. *v.* Johnson (C. C. A. 1893) 54 Fed. 474; Duryee *v.* Mayor etc. of New York (1884) 96 N. Y. 477; Cohen *v.* St. Louis, F. S. & W. R. R. (1885) *supra*; see Longworth *v.* Cincinnati (1891) 48 Ohio 637, 647.

[1]See Spring Valley Waterworks *v.* City etc. of San Francisco (C. C. 1903) 124 Fed. 574; Minneapolis & St. Louis R. R. *v.* Minnesota (1902) 186 U. S. 257, 266.

have a fair return on its investment;[2] but the question as to what constitutes a fair return is largely a mathematical one, and is not solved without much difficulty.[3] In the case of a complete schedule of rates, it is well established that an adequate return upon the reasonable value of the property at the time it is being devoted to the public use is the proper basis of computing the fair return.[4] In order to ascertain that value, "the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses," are matters to be considered.[5] So when the plaintiff fails to show most of these and depends upon general averments and proof of unreasonableness of certain rates, the presumption of reasonableness will prevail to defeat the contention of unreasonableness.[6]

Another rule is firmly settled, that the reasonableness of a schedule of rates for intrastate business must be determined without reference to the interstate business of the carrier.[7] Moreover, the determination of the value of the property within the State must be made independently of calculation on the basis of earnings alone, for the Supreme Court in the *Minnesota Rate Cases*[8] disapproved of the method of finding the value of the entire property within the State by apportioning intrastate and interstate business according to the gross earnings derived from each. Furthermore, the value of the property within the State having been properly established, the test of the reasonableness of a schedule of rates is the effect on the carrier's entire line and not upon a portion or certain division of it, because the carrier cannot claim the right to earn a profit from every part into which the road might be divided.[9]

The reasonableness of a particular rate presents a more difficult question. Generally, the interests of a railroad company are directed towards securing a schedule of rates which as a whole will produce a fair return upon its investment.[10] In the recent case of *Northern Pacific Ry.* v. *North Dakota* (March 8, 1915) Oct. Term, 1914, not yet reported,[11] the Supreme Court held that a State may not segregate

---

[2]11 Columbia Law Rev., 639, 658; 2 Wyman, Public Service Corporations, §§ 1066, 1126.

[3]See Beale & Wyman, Railroad Rate Regulation, §§ 312, 313.

[4]The Minnesota Rate Cases (1913) 230 U. S. 352, 434; Smyth *v.* Ames (1898) 169 U. S. 466, 546-547.

[5]Smyth *v.* Ames, *supra.*

[6]Louisville & N. Ry. *v.* Garrett (1913) 231 U. S. 298; *cf.* Missouri Rate Cases (1913) 230 U. S. 474.

[7]Smyth *v.* Ames, *supra.*

[8]*Supra,* p. 461.

[9]St. Louis & San Franscisco Ry. *v.* Gill (1895) 156 U. S. 649, in which the court, at p. 666, says: "It would be practically impossible to ascertain in what proportion the several parts should share with others in the expenses and receipts in which they participated".

[10]2 Wyman, Public Service Corporations, § 1060.

[11]The Court at the same time likewise held that the State may not select either the passenger or the freight department of a receiver's business for arbitrary action. The returns from each must in themselves be compensatory. Norfolk & Western Ry. *v.* Conley (March 8, 1915) Oct. Term, 1914, not yet reported.

a particular commodity and provide a rate which affords no return above the "out-of-pocket" charges, and "fixed" charges which are attributable to that particular traffic. The result of the decision is to give the carrier an added interest besides the right of demanding a fair return upon its whole investment.

The considerations which enter into the determination of the reasonableness of a particular rate would seem to be the following: that the individual shipper ought not to pay any more than the service is worth to him;[12] that the State cannot, under the pretense of regulating rates, compel a railroad to carry property without just compensation.[13] In fact, from the viewpoint of both parties, the value of the services is theoretically the test.[14] But the value of a particular service of a carrier is an economic question, which depends upon various factors; it cannot be determined by proof of value in itself and nothing more.[15] After all, the carrier is entitled to a fair return upon the value of its investment which is attributable to the particular traffic, and the shipper should not be heard to complain if the particular rate gives a fair return.

How shall a fair return be determined in the case of a particular rate? Among other things, the expense of transporting the particular traffic is one of the chief matters for consideration.[16] In this connection, the Supreme Court has repudiated the method of ascertaining the earnings from a particular traffic and determining the cost of transportation on the basis of the ratio of total expenses to total earnings.[17] Moreover, it has been held that the value of the entire property employed in the public use, while important in considering a complete schedule of rates, has little direct bearing upon the question whether a particular rate yields its proper return.[18] The Supreme Court decisions point squarely to the proposition that the carrier, at all events, must show definitely the cost of the particular traffic;[19] otherwise, the presumption of reasonableness obtains, and it can have no relief. Theoretically, the legislative authority which fixes the rates should apportion ratably the total disbursements of every sort to the

---

[12]Beale & Wyman, Railroad Rate Regulation, § 320; *cf.* Kennebec Water District *v.* City of Waterville (1902) 97 Me. 185, 202.

[13]See Railroad Commission Cases (1886) 116 U. S. 307, 331.

[14]See Canada Southern Ry. *v.* International Bridge Co. (1883) L. R. 8 App. Cas. 723.

[15]*Cf.* Int. Com. Comm. *v.* Union Pacific R. R. (1912) 222 U. S. 541, 549.

[16]4 Elliott, Railroads (2nd ed.) § 1684; Beale & Wyman, Railroad Rate Regulation, § 474. The length of the haul and the volume of traffic are other important factors. Beale & Wyman, Rate Regulations, §§ 476, 478.

[17]Wood *v.* Vandalia R. R. (1913) 231 U. S. 1, in which the court, at p. 5, says: "It is plain, however, that it does not follow from the mere fact that the total operating expenses of a railroad, or of a division of a railroad, bear a given relation to the entire receipts of that road or division, that the cost of transportation in the case of a particular class of traffic bears the same relation to the revenue derived from that class."

[18]See Central Yellow Pine Assn. *v.* Illinois Central R. R. (1905) 10 Int. Com. Rep. 505, 538.

[19]Minneapolis & St. Louis R. R. *v.* Minnesota, *supra*; Atlantic Coast Line *v.* Florida (1906) 203 U. S. 256, 260, in which cases the failure of the carrier to show definitely the cost of transportation was fatal.

various items of traffic, and accordingly, provide proportionate rates.[20] But as a practical matter, the burden is upon the carrier, when assailing a particular rate, of finding some satisfactory method of apportioning the various costs. The difficulties in the way of this are obvious, and it would seem more salutary that the carrier should not be allowed to complain of a particular rate, but that on the other hand, it should be limited to the right to have a fair return upon its entire investment, interstate or intrastate, as a unit.

---

MORTGAGES ON RAILROAD ROLLING STOCK.—Although most mortgages purporting to cover rolling stock of a railroad expressly mention such equipment, omission of a clause specifically pledging the cars and locomotives is not necessarily fatal to the claim of the mortgagee. If the phraseology of the instrument be such that inclusion of the rolling stock would amount to a violent straining of the language employed by the parties, the rolling equipment is not subjected to the mortgage.[1] But courts are occasionally willing to adopt liberal interpretations of mortgages placed before them for construction,[2] and if the mortgage comprehend in its terms "all the property" of the railroad company, the rolling stock seems reasonably to be included therein, whether it be considered real property or chattels.[3]

Whether the rolling stock of a railroad forms a portion of the realty of the company or constitutes part of its personalty is a question which has engendered much discussion, given rise to irreconcilable lines of authority and necessitated in many jurisdictions official extra judicial determination, either by statute or by constitutional provision.[4] The recent case of *Booth* v. *Central Savings Bank* (Colo. 1915) 146 Pac. 240, declaring the rolling equipment of a company to be a part of the realty, follows, on this point, the minority of American decisions, for although in some jurisdictions rolling stock is considered a fixture,[5] in the majority it is regarded as personalty.[6]

---

[20] 2 Wyman, Public Service Corporations, § 1064.

[1] A mortgage of the "road and its franchise" does not embrace the rolling stock. Miller *v.* Rutland etc. R. R. (1863) 36 Vt. 452, 498.

[2] A mortgage of an entire line of a railroad together with "all the revenue or tolls thereof" was held to cover all the rolling stock needed for the production of tolls and revenues. Maryland *v.* Northern etc. Ry. (1861) 18 Md. 193.

[3] Meyer *v.* Johnston (1875) 53 Ala. 237, 332, s. c. (1879) 64 Ala. 603. *A fortiori,* when the mortgage includes "all the property" "together with the tolls and income therefrom", the rolling stock is comprehended. Pullan *v.* Cincinnati etc. R. R. (C. C. 1865) 4 Biss. 35.

[4] Jones, Railroad Securities (3rd ed.) §§ 136, 139, 151. See note to case of Western Lumber Co. *v.* Keystone L. & M. Co. (W. Va. 1902) 66 L. R. A. 33, 49.

[5] Minnesota Co. *v.* St. Paul Co. (1864) 2 Wall. 609; Elizabethtown etc. R. R. *v.* Elizabethtown (Ky. 1876) 12 Bush 233; see Jones, Railroad Securities (3rd ed.) § 136. But rolling stock belonging to another and placed upon the railroad temporarily does not become a fixture. Hardesty *v.* Pyle (C. C. 1883) 15 Fed. 778.

[6] Jones, Railroad Securities (3rd ed.) § 150; Williamson *v.* New Jersey Southern R. R. (1878) 29 N. J. Eq. 311; Coe *v.* Columbus etc. R. R. (1859) 10 Ohio St. 372, 378. Some state courts have changed the status of rolling equipment from realty to personalty even in the absence of statute. *Cf.* Farmers' etc. Co. *v.* Hendrickson (N. Y. 1857)